

Attorney Docket No.: 5670-40

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Prabakaran et al
Serial No.: 10/092,646
Filed: March 6, 2002
For: METHODS FOR MANAGING OBJECTS CREATED IN A DIRECTORY
SERVICE

Group Art Unit: 2194
Confirmation No.: 8485
Examiner: Qing Yuan Wu

Date: January 5, 2006

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**TRANSMITTAL OF APPEAL BRIEF
(PATENT APPLICATION--37 C.F.R. § 41.37)**

1. Transmitted herewith is the APPEAL BRIEF for the above-identified application, pursuant to the Notice of Appeal filed on November 8, 2005.

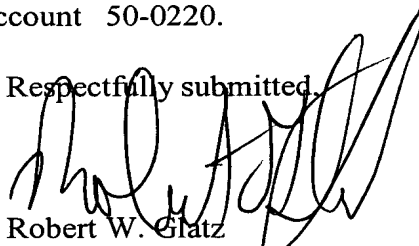
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3. Pursuant to 37 C.F.R. § 41.20(b)(2), the fee for filing the Appeal Brief is:
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Respectfully submitted,



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Registration No. 36,811

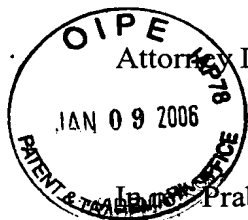
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Carey Gregory

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Carey Gregory

APPELLANT'S BRIEF ON APPEAL UNDER 37 C.F.R. §1.192

Sir:

This Appeal Brief is filed pursuant to the "Notice of Appeal to the Board of Patent Appeals and Interferences" mailed November 8, 2005.

Real Party In Interest

The real party in interest is assignee NetIQ Corporation, a Delaware corporation having its principal place of business in San Jose, California.

Related Appeals and Interferences

Appellants are aware of no appeals or interferences that would be affected by the present appeal.

Status of Claims

Claims 3-7, 9-12 and 14-22 remain pending as of the filing date of this Brief. Claims 3-7, 9-12 and 14-22 stand finally rejected. Appellants appeal the final rejection of Claims 3-7, 9-12 and 14-22. The attached Appendix A presents the claims at issue as finally rejected in the Final Office Action of August 9, 2005 (hereinafter "Final Action") and the Advisory Action mailed October 28, 2005 (hereinafter "Advisory Action").

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Status of Amendments

The attached Appendix A presents the pending claims and the corresponding status of each of the pending claims. Amendments proposed in the response to the Final Action were not entered. Advisory Action, p. 2. A copy of the amendment that was not entered is attached at Appendix B.

Summary of the Claimed Subject Matter

The present application includes method and system claims directed to selective restoring of policy objects associated with a directory service of a computer. Policy objects are "a common way to effectuate changes in Registry setting data." Specification, p. 7, line 21. Policy objects "are a special type of directory objects that could contain information on controlling how programs, network resources, and the operating system operate for users and computers in an organization utilizing a distributed computing environment." Specification, p. 8, lines 4-6. Using embodiments of the present invention, policy objects may be individually backed up and restored. Specification, p. 3, line 20. For example, if a group policy object is lost, "the administrator need only restore the individual policy object that was deleted or corrupted." Specification, p. 3, lines 21-22. Such selective restoring may be "completed in a fraction of the time it takes to restore the entire directory." Specification, p. 3, lines 22-24.

In particular, independent method Claim 14 is directed to a method for selective restoring of policy objects associated with a directory service of a computer system including backing up a plurality of the policy objects associated with the directory service of the computer system. A problem is detected with a selected one of the plurality of policy objects and the selected one of the plurality of policy objects is restored without restoring others of the plurality of policy objects.

Independent Claim 22 is a system claim including "means for" type recitations corresponding to method Claim 14. Corresponding structure for the means for backing up is found, for example, in the specification at page 5, lines 1-11. Corresponding structure for the means for restoring is found, for example, in the specification at page 5, lines 12-24. Corresponding structure discussing both is also found in the specification at page 6, line 1 to page 7, line 6. Corresponding structure for the means for detecting a problem is found, for

example, at page 3, lines 20-22. In particular, the corresponding structure for all three policy manager means of Claim 22 may be "software applications." Specification, p. 3, lines 1-2.

Various additional embodiments are claimed by ones of the dependent method claims. For example, Claim 17 recites "restoring the selected one of the plurality of policy objects includes replicating the selected one of the plurality of policy objects across domain boundaries of the computer system." Such embodiments may allow the replication of security objects across domain and forest boundaries without having to manually recreate them." Specification, p. 3, lines 15-16.

Issues to be Reviewed on Appeal

1. Are Claims 3-7, 9-12 and 14-21 properly rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter?
2. Are Claims 9-10, 15, 19 and 21 properly rejected under 35 U.S.C. § 112, second paragraph, as being indefinite?
3. Are Claims 3-7, 9-12, 14-17 and 19-22 properly rejected under 35 U.S.C. § 103(a) as unpatentable over "Inside Windows 200 Server" to Boswell (hereinafter "Boswell") in view of U.S. Patent No. 5,878,408 to Van Huben *et al.* (hereinafter "Van Huben")?
4. Is Claim 18 properly rejected under 35 U.S.C. § 103(a) as unpatentable over Boswell and Van Huben and further in view of U.S. Patent Application Pub. No. 2002/0095524 to Sanghvi *et al.* (hereinafter "Sanghvi")?

Argument

I. Introduction

Claims 3-7, 9-12 and 14-21 stand rejected under 35 U.S.C. § 101 as being non-statutory subject matter as they fail to recite the method is computer implemented. The United States Patent Office has recently issued the following guidelines related to such a rejection:

In addition, the Federal Circuit has recently noted that a "structural inquiry is unnecessary" when determining whether a process claim is eligible for patent protection. *AT&T*, 172 F.3d at 1359, 50 USPQ2d at 1452.

Thus, a finding that a claim fails to recite a computer-implemented process is not determinative in whether that claim passes muster under Sec. 101.

Therefore, USPTO personnel should no longer rely on the machine implemented test to determine whether a claimed invention is directed to statutory subject matter.

Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility, OG Notices, 22 November 2005; *See also, AT&T Corp. v. Excel Communications, Inc.*, 172 F.3d 1352, 1359, 50 USPQ2d 1447, 1452 (Fed. Cir. 1999).

Claims 3-7, 9-12 and 14-22 stand rejected as obvious under 35 U.S.C. § 103. To establish a prima facie case of obviousness, the prior art reference or references when combined must teach or suggest *all* the recitations of the claims, and there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. M.P.E.P. §2143. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. M.P.E.P. §2143.01, citing *In re Mills*, 916 F.2d 680, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990). As emphasized by the Court of Appeals for the Federal Circuit, to support combining references, evidence of a suggestion, teaching, or motivation to combine must be *clear and particular*, and this requirement for clear and particular evidence is not met by broad and conclusory statements about the teachings of references. *In re Dembiczak*, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). The Court of Appeals for the Federal Circuit has further stated that, to support combining or modifying references, there must be *particular* evidence from the prior art as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed. *In re Kotzab*, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000).

Furthermore, as stated by the Court of Appeals for the Federal Circuit in *In re Sang-su Lee*, a factual question of motivation is material to patentability, **and cannot be resolved on subjective belief and unknown authority**. *See In re Sang-su Lee*, 277 F.3d 1338 (Fed. Cir. 2002)(emphasis added). It is improper, in determining whether a person of ordinary skill would have been led to this combination of references, simply to "[use] that which the inventor taught against its teacher." *W.L. Gore v. Garlock, Inc.*, 721 F.2d 1540, 1553, 220 U.S.P.Q. 303, 312-13 (Fed. Cir. 1983).

II. Claims 3-7, 9-12 and 14-21 Are Directed to Statutory Subject Matter

Claims 3-7, 9-12 and 14-21 stand rejected under 35 U.S.C. § 101 as not being directed to statutory subject matter. In the Final Action, the Examiner indicated that the rejection would be overcome by reciting "computer implemented" in the preamble before the term "method." Final Action, p. 2. As discussed in the previous section, this rejection is contrary to the United States Patent Office's own guidelines and understanding of current Federal Circuit case law. Accordingly, the rejections of Claims 3-7, 9-12 and 14-21 as directed to non-statutory subject matter should be reversed for at least these reasons.

III. Claims 9-10, 15, 19 and 21 Are Not Indefinite

Claims 9-10, 15, 19 and 21 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. In particular, the Examiner asserted that the recitation "and/or" is indefinite as it is unclear if "applicant means 'and or or'?" Final Action, p. 3. Appellants submit that "and/or" is not indefinite. By way of example "A and/or B" would encompass any of: 1) A; 2) B; and 3) A and B. Accordingly, the rejections of Claims 9-10, 15, 19 and 21 as indefinite should be reversed for at least these reasons.

IV. Independent Claims 14 and 22 Are Patentable Over Boswell and Van Huben

Independent Claims 14 and 22, and the claims that depend therefrom, are rejected under 35 U.S.C. § 103 as being unpatentable over Boswell in combination with Van Huben. Final Action, p.3. Appellants further note that one of these dependent claims, Claim 18 is rejected under 35 U.S.C. § 103 as being unpatentable over Boswell and Van Huben in combination with Sanghvi. Final Action, p. 8.

Appellants submit that the Final Action has failed to establish a *prima facie* case of obviousness as a proper motivation to combine the references in the manner cited in the claims has not been established. In addition, even were the references to be combined as cited by the Final Action, the combination would not disclose or suggest the recitations of the pending claims. Accordingly, the rejections should be reversed for at least these reasons.

In rejecting Claim 14, the Office Action asserts that Boswell discloses "backing up a plurality of the policy objects associated with the directory service of the computer system." Final Action, p. 4. In particular, the Office Action cites to Chapter 11 of Boswell, regarding backing up the directory and performing directory maintenance.

Independent Claim 14 recites as follows:

A method for selective restoring of policy objects associated with a directory service of a computer system, comprising:
backing up a plurality of the policy objects associated with the directory service of the computer system;
detecting a problem with a selected one of the plurality of policy objects; and
restoring the selected one of the plurality of policy objects without restoring others of the plurality of policy objects. (Emphasis added)

Appellants submit that at least the highlighted portions of Claim 14 are not disclosed nor suggested by Boswell or Van Huben.

As described in the present specification, the selective restoration of the present invention may be advantageous, particularly in a networked computer system environment. In particular, some embodiments of the present invention, such as recited in Claim 14, may be:

capable of backing up and restoring policy objects individually. In the event a group policy object is lost, the administrator need only restore the individual policy object that was deleted or corrupted. The process of restoring only the lost policy object can be completed in a fraction of the time it takes to restore the entire directory service.

Specification, p. 3, lines 20-24.

In contrast, Boswell states:

The **only method for backing up** the Registry and the Active Directory is by using Windows 2000 Backup. . . One drawback to the new backup strategy in Windows 2000 does exist. You cannot back up or restore just the Registry or just the Directory or just the boot files. **You must back up and restore all system files at once.**

Boswell, Chap. 1, page 1 of excerpt provided by Examiner (emphasis added). Thus, Boswell, if anything, teaches away from selective restoring of one or more policy objects where a problem is detected without restoring others of the policy objects as recited in Claim 14.

In rejecting independent Claim 14, the Final Action acknowledges that Boswell does not teach "detecting a problem with a selected one of the plurality of objects; and restoring the selected one of the plurality of policy objects without restoring others of the plurality of policy objects." Final Action, p. 4. Van Huben is relied on as teaching "restoring individual

data objects." Final Action, p. 4. The Final Action further relies on the following statement in Boswell in alleging a motivation to combine the references: "One drawback to the new backup strategy ... does exist. You cannot back up or restore just the Registry or just the Directory or just the boot files. You must back up and restore all system files at once." Boswell, Chapter 11, page 1.¹ However, even if this is assumed to be a motivation to combine Boswell and Van Huben, the result would not be the present invention as recited in Claim 14.

More particularly, Boswell relates to Microsoft's Active Directory, which is clearly "a directory service of a computer system" as recited in Claim 14. However, the portion cited by the Office Action in Boswell is discussing a problem with having to back up or restore "all system files at once." The system files include not only the Directory but also other Windows operating system features referred to as the Registry and the boot files. While Active Directory does interact with and affect the Registry, it does not include the Registry or the boot files.

Claim 14 recites that the "selected one of the plurality of policy objects" is "**associated with** the directory service." (Emphasis added.) The cited portion of Boswell fails to even identify any need to provide for separate back up or restore of objects within the Directory. Instead, Boswell identifies a problem that files not associated with the Directory must be backed up or restored whenever the Directory is backed up or restored. Thus, even were Van Huben to be combined with Boswell, the combination would not disclose or suggest the invention as recited in Claim 14 as the Directory would still all be restored at once, it would just not be necessary to restore the Registry and boot files at the same time. Accordingly, the rejection of Claim 14 should be reversed for at least these reasons.

In addition, Van Huben is directed to a "design control system suitable for use in connection with the design of integrated circuits and other elements of manufacture," as contrasted with the operating system (Windows) of Boswell. Van Huben, Abstract. As stated in Van Huben:

Our invention provides for processing and tracking data for a Data Management Design Control System running in a client server environment where elements of the system may exist on a homogenous computer platform, or the elements may be scattered across multiple platforms in a heterogeneous environment. The Design Control System provides processes for hardware design,

¹ The Advisory Action on the continuation page at paragraph (a), while using a slightly different wording, does not substantively modify the alleged basis of the motivation to combine Boswell and Van Huben.

software development, manufacturing, inventory tracking, or any related field which necessitates execution of repetitive tasks against multiple iterations of data in a quality controlled environment.

Our invention provides a design control system usable in a concurrent engineering process which can cooperate in a distributed environment worldwide to enable a design to be processed with many concurrent engineering people and processes.

Van Huben, Col. 5, line 54 to Col. 6, line 2. Thus, while the cited portions of Van Huben may relate to selective restoring of "data objects," they do not relate to policy objects of a directory service as recited in Claim 14 and discussed in Boswell. Nothing in Van Huben appears to provide any motivation to apply particular features of a cooperative design control system to the back up or restore of a Directory of a Windows operating system as discussed in Boswell. Accordingly, the rejection of Claim 14 should also be reversed as nothing in either of the cited references supports the combination relied on for the rejections.

The Advisory Action asserts that the recitations of Claim 14 do not support Appellants' arguments characterized by the Advisory Action as regarding Boswell's failure to "identify any need to provide for separate back up or restore of objects within the Directory." Advisory Action, Continuation Sheet. To the extent Appellants understand this assertion, it is believed that the Examiner may have understood Appellants arguments. The Final Action acknowledges that Boswell does not disclose restoring a selected one of the policy objects in a directory without restoring others. Final Action, p. 4. It is also clear that Boswell discusses a problem with having to back up or restore "all system files at once." However, Appellants argument, as discussed above, is that this discussion in Boswell is, at most, a suggestion that the Directory should be able to be backed up without backing up other system files and vice-versa. Thus, Boswell does suggest any problem caused by the inability to separately backup objects within the Directory, nonetheless individual policy objects having detected problems, as recited in Claim 14.

Independent system Claim 22 includes recitations corresponding to those discussed above with reference to Claim 14. In fact, the Final Action states that Claim 22 "is rejected for the same reason as claim 14." Final Action, p. 8. Accordingly, the rejection of Claim 22 should be reversed at least for reasons substantially corresponding to those discussed above with reference to Claim 14. The dependent claims are patentable at least based on their dependence from a patentable base claim.

V. Claims 17, 20 and 21 are Separately Patentable

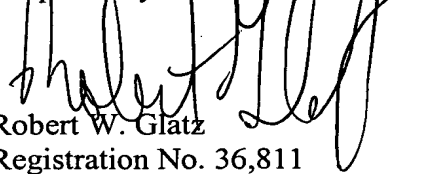
Dependent claims 17, 20 and 21 are patentable at least based on their dependence from a patentable independent claim. The rejection of Claim 17 cites to page 5 of Chapter 11 of Boswell as teaching replicating objects across domain boundaries. Final Action, p. 6. However, the cited portion of Boswell states "[o]nly properties are replicated, not entire objects." Claims 20 and 21 also include recitations related to restoring objects across domains. Accordingly, Claims 17, 20 and 21 are also separately patentable for at least these additional reasons. Accordingly, the rejection of Claims 17, 20 and 21 should also be reversed for at least these additional reasons.

VI. Conclusion

In light of the above discussion, Appellants submit that the pending claims are directed to patentable subject matter, are definite and are patentable over the cited references and, therefore, request reversal of the rejections of those claims and passing of the application to issue.

It is not believed that an extension of time and/or additional fee(s) are required, beyond those that may otherwise be provided for in documents accompanying this paper. In the event, however, that an extension of time is necessary to allow consideration of this paper, such an extension is hereby petitioned for under 37 C.F.R. §1.136(a). Any additional fees believed to be due in connection with this paper may be charged to Deposit Account No. 50-0220.

Respectfully submitted,


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APPENDIX A
Pending Claims USSN 10/092,646
Filed March 6, 2002

Listing of the Claims:

- 1-2. (Canceled).
3. (Rejected) The method of claim 14 wherein the directory service further includes user objects.
4. (Rejected) The method of claim 14 wherein the directory service further includes computer objects.
5. (Rejected) The method of claim 14 wherein the directory service further includes printer objects.
6. (Rejected) The method of claim 14 wherein the directory service further includes a directory service component with a descriptive parameter.
7. (Rejected) The method of claim 14 wherein backing up includes storing object settings, links to directory service objects, and security information regarding directory service objects.
8. (Canceled).
9. (Rejected) The method of claim 19 wherein various levels of security privileges can be delegated.
10. (Rejected) The method of claim 9 wherein the levels of security privileges that can be delegated include the ability to configure an entire policy object or the ability to configure only one or a plurality of administrative templates contained in a policy object.

11. (Rejected) The method of claim 14 wherein policy data associated with a policy object is stored in a database.

12. (Original) The method of claim 11 wherein the database where policy data is stored is the registry.

13. (Canceled).

14. (Rejected) A method for selective restoring of policy objects associated with a directory service of a computer system, comprising:

backing up a plurality of the policy objects associated with the directory service of the computer system;

detecting a problem with a selected one of the plurality of policy objects; and

restoring the selected one of the plurality of policy objects without restoring others of the plurality of policy objects.

15. (Rejected) The method of Claim 14 wherein the detected problem comprises deletion and/or corruption of the selected one of the plurality of policy objects.

16. (Rejected) The method of Claim 14 wherein detecting a problem with a selected one of the plurality of policy objects comprises detecting problems with a plurality of policy objects and restoring the selected one comprises restoring the plurality of policy objects with detected problems.

17. (Rejected) The method of Claim 14 wherein restoring the selected one of the plurality of policy objects includes replicating the selected one of the plurality of policy objects across domain boundaries of the computer system.

18. (Rejected) The method of Claim 14 further comprising:

analyzing the effect a particular setting of one of the policy objects will have on a particular target represented as a directory service object before the particular setting is implemented in the directory service.

19. (Rejected) The method of Claim 14 wherein a security privilege of the computer system is required to restore and/or effect a particular setting of the policy objects and wherein the method further comprises:

delegating the security privilege to selected users for selected objects in the directory service.

20. (Rejected) The method of Claim 14 wherein restoring includes restoring the selected one of the plurality of objects to a domain of the computer system from which it was backed up.

21. (Rejected) The method of Claim 14 wherein restoring includes restoring the selected one of the plurality of objects to a parent and/or child domain of a domain of the computer system from which it was backed up.

22. (Rejected) A system for selective restoring of policy objects associated with a directory service of a computer system, comprising:

means for backing up a plurality of the policy objects associated with the directory service of the computer system;

means for detecting a problem with a selected one of the plurality of policy objects;
and

means for restoring the selected one of the plurality of policy objects without restoring others of the plurality of policy objects.

APPENDIX B – UNENTERED AMENDMENT CLAIMS

Amendments to the claims:

This listing of the claims will replace all prior versions and listings of the claims in the application:

Listing of the Claims:

- 1-2. (Canceled).
3. (Previously Presented) The method of claim 14 wherein the directory service further includes user objects.
4. (Previously Presented) The method of claim 14 wherein the directory service further includes computer objects.
5. (Previously Presented) The method of claim 14 wherein the directory service further includes printer objects.
6. (Previously Presented) The method of claim 14 wherein the directory service further includes a directory service component with a descriptive parameter.
7. (Previously Presented) The method of claim 14 wherein backing up includes storing object settings, links to directory service objects, and security information regarding directory service objects.
8. (Canceled).
9. (Previously Presented) The method of claim 19 wherein various levels of security privileges can be delegated.
10. (Previously Presented) The method of claim 9 wherein the levels of security privileges that can be delegated include the ability to configure an entire policy object or the ability to configure only one or a plurality of administrative templates contained in a policy object.

11. (Previously Presented) The method of claim 14 wherein policy data associated with a policy object is stored in a database.

12. (Original) The method of claim 11 wherein the database where policy data is stored is the registry.

13. (Canceled).

14. (Currently amended) A computer implemented method for selective restoring of policy objects associated with a directory service of a computer system, comprising:

backing up a plurality of the policy objects associated with the directory service of the computer system;

detecting a problem with a selected one of the plurality of policy objects; and

restoring the selected one of the plurality of policy objects without restoring others of the plurality of policy objects.

15. (Currently amended) The method of Claim 14 wherein the detected problem comprises ~~deletion and/or~~ corruption of the selected one of the plurality of policy objects.

16. (Previously Presented) The method of Claim 14 wherein detecting a problem with a selected one of the plurality of policy objects comprises detecting problems with a plurality of policy objects and restoring the selected one comprises restoring the plurality of policy objects with detected problems.

17. (Previously Presented) The method of Claim 14 wherein restoring the selected one of the plurality of policy objects includes replicating the selected one of the plurality of policy objects across domain boundaries of the computer system.

18. (Previously Presented) The method of Claim 14 further comprising:

analyzing the effect a particular setting of one of the policy objects will have on a particular target represented as a directory service object before the particular setting is implemented in the directory service.

19. (Currently amended) The method of Claim 14 wherein a security privilege of the computer system is required to ~~restore and/or~~ effect a particular setting of the policy objects and wherein the method further comprises:

delegating the security privilege to selected users for selected objects in the directory service.

20. (Previously Presented) The method of Claim 14 wherein restoring includes restoring the selected one of the plurality of objects to a domain of the computer system from which it was backed up.

21. (Currently amended) The method of Claim 14 wherein restoring includes restoring the selected one of the plurality of objects to a parent ~~and/or child~~ domain of a domain of the computer system from which it was backed up.

22. (Previously Presented) A system for selective restoring of policy objects associated with a directory service of a computer system, comprising:

means for backing up a plurality of the policy objects associated with the directory service of the computer system;

means for detecting a problem with a selected one of the plurality of policy objects;
and

means for restoring the selected one of the plurality of policy objects without restoring others of the plurality of policy objects.

23. (New) The method of Claim 14 wherein the detected problem comprises deletion of the selected one of the plurality of policy objects.

24. (New) The method of Claim 14 wherein a security privilege of the computer system is required to restore a particular setting of the policy objects and wherein the method further comprises:

delegating the security privilege to selected users for selected objects in the directory service.

25. (New) The method of Claim 14 wherein restoring includes restoring the selected one of the plurality of objects to a child domain of a domain of the computer system from which it was backed up.

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APPENDIX C – EVIDENCE APPENDIX
(NONE)

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APPENDIX D – RELATED PROCEEDINGS
(NONE)